



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNRL-S, FFL**

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 25 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords attended, assisted by an agent and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlords testified that they served each of the tenants with the notice of application and evidence by registered mail sent on June 2, 2021 to the forwarding address provided by the tenants. The landlords provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlords' materials on June 7, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlords made an application requesting to amend the monetary amount of their claim. The landlords indicated that since the application was filed they have incurred additional losses attributable to this tenancy. As additional amounts for damages and loss becoming apparent over time is reasonably foreseeable, pursuant to section 64(3)(c) of the Act and Rule of Procedure 4.2 I amend the landlords' application to increase their monetary claim from \$7,413.46 to \$9,217.99.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the deposit for this tenancy?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlords provided undisputed evidence regarding the following facts. This periodic tenancy began on June 1, 2020. The monthly rent was \$2,500.00 payable on the first of each month. The tenants are responsible for paying for the utilities for the rental unit. The written tenancy agreement provides that a late fee of \$25.00 is payable for rent not paid by the required date. A security deposit of \$1,250.00 was collected at the start of the tenancy and is still held by the landlords.

There was a previous hearing under the file number on the first page of this decision on February 18, 2021. The hearing resulted in a settlement agreement between the parties whereby the tenants agreed to provide vacant possession of the rental unit by 6:00pm on April 30, 2021. The landlords submit that contrary to the agreement the tenants overheld the rental unit until May 3, 2021. The tenants did not pay rent for this period.

The landlords submit that the tenants failed to pay the full rent required under the tenancy agreement, failed to pay the water utilities and incurred late fees for which there is an arrear of \$7,413.46. The landlord submitted into evidence the rental ledger showing the amount payable, correspondence with the tenants making demand of the unpaid utilities and copies of the utility bills.

The landlords submit that the tenants vacated the rental unit without participating in a move-out inspection and preparing a condition inspection report. The landlords testified that the rental unit required some cleaning, maintenance and garbage disposal due to its condition. The landlords submitted into evidence several photographs of the suite, receipts for their losses and expenses and provided detailed testimony describing the work they undertook. The landlords submit that the total cost of the cleaning and work done is \$1,804.53.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied on a balance of probabilities that the tenants were obligated to pay rent in the amount of \$2,500.00 and utilities for this tenancy. I find, based on the undisputed evidence of the landlords, that the tenants breached the agreement by failing to pay the amounts as required and incurred additional late charges. I find that the total amount of the arrear for this tenancy including unpaid rent and utilities, late fees and compensation for overholding to be \$7,413.46. I therefore issue a monetary award in the landlords' favour in that amount.

I find that the landlord incurred losses as a result of the condition of the rental unit. I am satisfied that the damage and need for cleaning and work is attributable to the tenants. I find that the landlord provided a preponderance of evidence through their photographs, documentary materials and detailed testimony. I am satisfied that the total amount of the losses incurred by the landlords is \$1,804.53 and issue a monetary award in that amount accordingly.

As the landlords were successful in their application they are entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$8,067.99 allowing for recovery of the arrear for this tenancy, damages and loss, recovery of the filing fee and to retain the security deposit. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 18, 2021

Residential Tenancy Branch